

FOREIGN CLAIMS SETTLEMENT COMMISSION
OF THE UNITED STATES
WASHINGTON, D.C. 20579

IN THE MATTER OF THE CLAIM OF

THE AMERICAN AGRICULTURAL
CHEMICAL COMPANY (NEW JERSEY)

Claim No. CU -3560

Decision No. CU **2988**

Under the International Claims Settlement
Act of 1949, as amended

Counsel for claimant:

Richard Millan, Esq.

PROPOSED DECISION

This claim against the Government of Cuba, filed under Title V of the International Claims Settlement Act of 1949, as amended, in the amount of \$890,698.00, was presented by THE AMERICAN AGRICULTURAL CHEMICAL COMPANY (NEW JERSEY) and is based upon the asserted loss of its assets located in Cuba.

Under Title V of the International Claims Settlement Act of 1949 [78 Stat. 1110 (1964), 22 U.S.C. §§1643-1643k (1964), as amended, 79 Stat. 988 (1965)], the Commission is given jurisdiction over claims of nationals of the United States against the Government of Cuba. Section 503(a) of the Act provides that the Commission shall receive and determine in accordance with applicable substantive law, including international law, the amount and validity of claims by nationals of the United States against the Government of Cuba arising since January 1, 1959 for

losses resulting from the nationalization, expropriation, intervention or other taking of, or special measures directed against, property including any rights or interests therein owned wholly or partially, directly or indirectly at the time by nationals of the United States.

Section 502(3) of the Act provides:

The term 'property' means any property, right, or interest including any leasehold interest, and debts owed by the Government of Cuba or by enterprises which have been nationalized, expropriated, intervened, or taken by the Government of Cuba and debts which are a charge on property which has been nationalized, expropriated, intervened, or taken by the Government of Cuba.

Section 504 of the Act provides, as to ownership of claims, that

(a) A claim shall not be considered under section 503(a) of this title unless the property on which the claim was based was owned wholly or partially, directly or indirectly by a national of the United States on the date of the loss and if considered shall be considered only to the extent the claim has been held by one or more nationals of the United States continuously thereafter until the date of filing with the Commission.

The Regulations of the Commission provide:

The claimant shall be the moving party and shall have the burden of proof on all issues involved in the determination of his claim. (FCSC Reg., 45 C.F.R. §531.6(d) (Supp. 1967).)

Section 502(1)(B) of the Act defines the term "national of the United States" as a corporation or other legal entity which is organized under the laws of the United States, or of any State, the District of Columbia, or the Commonwealth of Puerto Rico, if natural persons who are citizens of the United States own, directly or indirectly, 50 per centum or more of the outstanding capital stock or other beneficial interest of such corporation or entity.

The record indicates that THE AMERICAN AGRICULTURAL CHEMICAL COMPANY was organized in the State of New Jersey, and that prior to October 21, 1963, all of its outstanding stock was owned by American Agricultural Chemical Company of Delaware. The record further indicates that since October 21, 1963, the stock of claimant corporation has been held by Continental Oil Company, which is also a Delaware corporation. No statements by officers of American Agricultural Chemical Company of Delaware, or of the Continental Oil Company have been submitted con-

cerning the United States nationality of those companies, although the Commission has suggested the submission of such documentation.

Claimant asserts that it was the owner of real property, personal property, merchandise inventories, cash, and bank accounts having a total value of \$890,698.00, and that the subject assets were taken by the Government of Cuba on October 14, 1960. In support, claimant has submitted copies of Cuban laws and resolutions, and a copy of a "deed", whereby the administration of its properties was transferred to a Cuban national.

By the Commission's letter of October 13, 1967, claimant, through counsel, was advised as to certain specific evidence proper for submission to substantiate this claim under the Act; namely, (1) proof of 50% ownership by United States nationals at all pertinent times in all involved companies; (2) a statement setting forth the percentage of stockholders' interests held in such companies by United States nationals on May 27, 1967 (the date of filing); (3) information and evidence as to the liabilities of claimant corporation, as well as proof of the value of the claimed assets in Cuba, including copies of balance sheets prepared prior to the date of loss.

On February 12, 1968, claimant, through counsel, was provided with additional material containing suggestions to assist in documenting the claim. On April 9, 1968, claimant, through counsel, was invited to submit the necessary evidence within 45 days, and claimant was informed that, absent such evidence, it might become necessary to determine the claim on the basis of the present record. Claimant or counsel has not responded to the correspondence of the Commission, and the suggested evidence has not been submitted in support of the claim.

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The Commission finds that claimant has not met the burden of proof, in that it has failed to establish its eligibility under Title V of the Act, with respect to any rights and interests in property which was nationalized, expropriated or otherwise taken by the Government of Cuba. Accordingly, this claim is hereby denied. The Commission deems it unnecessary to determine other elements of the claim.

Dated at Washington, D. C.,
and entered as the Proposed
Decision of the Commission

AUG 29 1968

Leonard V. B. Fulton

Leonard V. B. Fulton, Chairman

Theodore Jaffe

Theodore Jaffe, Commissioner

Sidney Freidberg

Sidney Freidberg, Commissioner

Notice: Pursuant to the Regulations of the Commission, if no objections are filed within 15 days after service or receipt of notice of this Proposed Decision, the decision will be entered as the Final Decision of the Commission upon the expiration of 30 days after such service or receipt of notice, unless the Commission otherwise orders. (FCSC Reg., 45 C.F.R. 531.5(e) and (g) as amended, 32 Fed. Reg. 412-13 (1967).)

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